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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 16 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996)

Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers)

CC Docket No. 94-129

**COMMENTS OF CABLE & WIRELESS USA, INC. ON
THE JOINT PETITION FOR WAIVER, THIRD PARTY ADMINISTRATOR,
AND MOTION FOR EXTENSION**

C&W USA strongly supports the Joint Petition for a Waiver, the third party administrator proposal, and the accompanying Motion for Extension. This proposal is in the public interest and meets the Commission's standards for granting a waiver as described herein.

THE COMMISSION INVITED THIRD PARTY ADMINISTRATOR PROPOSALS

In the Second Report & Order,¹ the Commission invited carriers to work together in creating a proposal for a third party administrator ("TPA") to resolve disputes among carriers and subscribers with regard to the unauthorized conversion of a subscriber's

¹ Implementation of the Subscriber Carrier Selections Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers by Long Distance Carriers, Second Report & Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 98-334, released December 23, 1998 (hereinafter "Second Report & Order"). A summary of the Second Report & Order was published in 64 F.R. 7746 (Feb. 16, 1999), as modified by 64 F.R. 9219 (Feb. 24, 1999).

preferred carrier, commonly referred to as “slamming.”² The Commission noted that consumers would benefit from an acceptable TPA by creating one point of contact to have their disputes handled and resolved, eliminating the need for the consumer to contact each carrier involved. Carriers would benefit from such a system since the LECs would no longer be required to act as an intermediary for complaints against IXC, while IXCs would be able to focus their resources on the prevention of slamming rather than resolving slamming disputes.³ In order to facilitate such a proposal, the Commission delayed the effective date of the liability rules in the Second Report & Order until 90 days after Federal Register publication.⁴

The Commission cautioned carriers that any TPA proposal must fulfill the obligations set forth in the Second Report & Order and must effectively further the goal of decreasing slamming in an efficient manner. Moreover, waiver of the Commission’s rules is appropriate only if special circumstances warrant a deviation from the general rules, and such a deviation will serve the public interest.⁵

The TPA proposal included with the Joint Petition clearly meets the Commission’s waiver standards. First, special circumstances warrant deviation from the liability and procedural rules in the Second Report & Order since the Commission specifically requested proposals for a third party administrator. Second, the proposal is in the public interest because it does not undermine the Commission’s policy, but, in fact, furthers this policy through a mechanism that is significantly more efficient than that included in the Second Report & Order. “Sound administrative procedure contemplates

² Second Report & Order at 55

³ Id.

⁴ Second Report & Order at 56

⁵ Second Report & Order at 56, fnt. 181 (citing WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969)).

waivers,”⁶ and this proposal and request for waiver furthers the Commission’s goals and the public interest.

**THE TPA PROPOSAL RESOLVES SLAMMING COMPLAINTS IN A FAIR,
EQUITABLE MANNER FOR ALL PARTIES INVOLVED.**

In the waiver petition, the Joint Parties detail a third party administrator plan that will establish an efficient, streamlined, and effective administrator for the benefit of all concerned parties, especially consumers. The TPA will quickly resolve consumer allegations of unauthorized conversion in a manner that is estimated to take one-quarter the time as the process contemplated by the Commission’s rules.⁷ It will be an independent entity, not controlled by any one carrier or group of similarly situated carriers, thus eliminating the interested carrier problem inherent in the Commission’s rules.⁸ It will provide consumers with the one number and one place requirement envisioned by the Commission, as well as reduce the number of complaints currently forwarded to the LECs.⁹

The TPA’s proposed structure will result in an equitable resolution of consumer slamming complaints. The TPA will be a single, neutral entity to be governed by a Board that equitably represents each facet of the telecommunications industry.¹⁰ It can provide interested Federal and state regulatory agencies with timely, unbiased reports on slamming complaints in the industry, permitting these agencies to focus their resources on more pressing issues.¹¹ The dispute resolution process envisioned in the proposal

⁶ WAIT, 418 F.2d at 1159.

⁷ TPA at 2, 13.

⁸ TPA at 2.

⁹ TPA at 11.

¹⁰ TPA at 15.

¹¹ TPA at 18.

provides carriers and consumers with a structure that is fair and equitable while efficiently resolving the consumer's complaint. Finally, the TPA's mechanism that monitors evidentiary submissions will guard against abuse by fraudulent carriers and will provide both regulators and consumers with surety that the system is legitimate and not subject to widespread abuse.

This TPA proposal presented by the Joint Parties is a win-win-win solution. Carriers, both IXCs and LECs, will face reduced burdens, and regulatory agencies will benefit from the utilization of slamming information. Most importantly, consumers will have a fair, equitable and easy to use solution to resolve their slamming complaints.

THE COMMISSION SHOULD GRANT THE MOTION FOR EXTENSION.

The Commission should also grant the accompanying Joint Motion for Extension without undue delay. The implementation of the proposed TPA will involve the cooperation of the IXC, LEC, and various regulatory communities, which will be a resource intensive and time consuming task. In the Order, the Commission recognized that the new carrier liability and consumer remedy rules would be cumbersome to implement when it requested interested parties submit TPA proposals. The Joint Parties and others who have discussed this proposal with the Commission have demonstrated good faith and a willingness to create a workable, efficient system that supervises consumer complaints without burdening carriers with a regulatory scheme that, at best, would be extremely difficult to execute. By extending the effective date of the liability to six months after the Commission's approval of the TPA proposal, the Commission would reasonably be balancing its goal of expediency with its goal of establishing a workable, consumer friendly solution. In the alternative, if the Commission does not act on a TPA

proposal, then it should stay the rules in order to address issues raised in the petitions for reconsideration filed in this docket.

OPPOSITION TO THIS PLAN MUST BE TAKEN IN CONTEXT

While C&W USA wholeheartedly supports the Joint Petition, TPA proposal, and Motion for Extension, it has become apparent that some parties may oppose the implementation of any TPA, or even examination of such proposals, for purely self-serving purposes. Consideration of these comments must be mitigated by the fact that this proposal is a blueprint that can be implemented in a manner that benefits all parties involved in the dispute resolution process. In order to implement this TPA proposal or any other, all parties, including the IXC's, must compromise to a certain degree in order for the administrator to be effective. This TPA proposal is in the public interest and should be implemented because it achieves the Commission's goals of decreasing slamming complaints in a fair, equitable, and efficient manner. Arguments that simply attack this proposal without offering reasonable alternatives or means to improve upon this or any other proposal, are counterproductive and should not be given serious consideration.

CONCLUSION

The Commission should work with the Joint Petitioners and other interested parties to create a neutral, independent TPA. Likewise, the Commission should grant the accompanying Motion for Extension in order to provide the necessary time to implement such a proposal. This proposal is in the public interest because it will decrease slamming

in a manner which is considerably more efficient and equitable than the present system or the one envisioned in the Second Report & Order.

Respectfully Submitted,

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